IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

MAYA AUSTELL,	:	APPEAL NO. C-100564 TRIAL NO. P09-2258X
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
BRANDON BOWIE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.[1]

Defendant-appellant Brandon Bowie appeals the judgment of the Hamilton County Juvenile Court ordering Bowie to pay child support in the amount of $160.88 per month for each of his twin daughters after the court imputed income to him on the ground that he was intentionally underemployed. For the reasons that follow, we reverse the trial court's judgment and remand this case for further proceedings consistent with the law.

Plaintiff-appellee Maya Austell and Bowie became parents to twin girls on September 12, 2007. On August 12, 2009, the Child Support Enforcement Agency ("CSEA") issued an administrative order setting Bowie's child-support obligation for the girls at zero. Austell filed an objection to CSEA's administrative order on September 23, 2009, and the matter was set for a hearing before a magistrate. On

[1] See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

November 5, 2009, the magistrate held a hearing, in Bowie's absence, and determined that Bowie had to pay $193.36 per month per child in support.

Bowie filed a motion to modify the support order. In Bowie's motion, he argued, in part, that he could not financially afford the support obligation ordered by the magistrate because he received public assistance and was a full-time student. Bowie's motion to modify was accompanied by an affidavit to waive the filing fee, and Bowie attached a benefits letter from Franklin County Job and Family Services to his affidavit. The letter indicated that Bowie received benefits through the state-administered program Ohio Works First.

Bowie's motion to modify was set for a hearing on March 12, 2010, before another magistrate. At the hearing, the magistrate determined that Bowie was not disabled and not incapable of working and, therefore, that Bowie was intentionally underemployed. The magistrate imputed income to Bowie based upon a job Bowie had held with UPS in 2007. The magistrate then set Bowie's child-support obligation at $160.88 per child. The trial court overruled Bowie's objections to the magistrate's decision, and this appeal ensued.

In a single assignment of error, Bowie argues that the trial court erred in determining that he was voluntarily underemployed and in imputing income to him, because he receives means-tested public benefits. At the outset, we note that we review a trial court's determination that a parent is voluntarily (i.e. intentionally) unemployed or underemployed for an abuse of discretion.[2]

For purposes of calculating child support, the income of a parent who is unemployed or underemployed includes the gross income of that parent, plus any

[2] *Rock v. Cabral* (1993), 67 Ohio St.3d 108, 112, 616 N.E.2d 218.

potential income.[3] Potential income includes "imputed income" that a parent would have earned if fully employed based on factors such as the parent's work history and education.[4] Before imputing income to a parent, however, the court or agency must make a specific finding that the parent is voluntarily underemployed or unemployed.[5]

According to R.C. 3119.05(I), "A court or agency shall not determine a parent receiving means-tested public assistance benefits to be voluntarily unemployed or underemployed and shall not impute income to that parent, unless not making such determination and not imputing income would be unjust, inappropriate, and not in the best interest of the child."

At the hearing, the following exchange took place between the magistrate and Bowie with regard to Bowie's benefits:

"THE COURT: You understand that being a full-time student does not mean that you are not going to be ordered to pay child support. You'll be ordered to pay child support --

"MR. BOWIE: Right now I'm on --

"THE COURT: -- it's going to be based upon what you are capable of earning not what you actually earned.

"MR. BOWIE: Right now I'm on public assistance --

"THE COURT: Doesn't matter.

"MR. BOWIE: -- because I'm raising my two-year-old son.

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[3] R.C. 3119.01(C)(5).
[4] R.C. 3119.01(C)(11).
[5] R.C. 3119.01(C)(11); see, also, *Beckworth v. Westendorf*, 1st Dist. No. C-020804, 2003-Ohio-5955, ¶11.

"THE COURT: Unless you are totally disabled there will be an order set and it will be based upon imputation of income -- [.]"[6]

Bowie and the magistrate then continued on the topic of Bowie's public assistance:

"THE COURT: That you're on state assistance, yes. I'm aware of that. It has no impact on --

"MR. BOWIE: That's $400 a month.

"THE COURT: -- that's no impact on the calculation of this child support formula, sir.

"MR. BOWIE: Why isn't it? I mean --

"THE COURT: Do you have documentation to present to me that you are totally disabled from working?

"MR. BOWIE: Yes they will not -- I cannot work while I'm taking the amount of per hours I work. I went down to Job and Family Services, they say that I'm in the job work forcement place, and they told me that I have to take a lab. And I'm taking a full-time lab in order --

"THE COURT: Sir, when I say physically disabled, I mean, that you have a medical condition which completely prevents you from being able to work. Do you have a medical condition, sir, that completely prevents you from being able to work?

"MR. BOWIE: No.

"THE COURT: Okay."[7]

Based upon the foregoing exchange, as well as the record as a whole, we must conclude that the magistrate acted unreasonably in determining that Bowie was

[6] T.p. 4 (Mar.12, 2010).
[7] T.p. 18-19.

intentionally underemployed without first making the specific finding required by R.C. 3119.05(I) that failing to impute income would be unjust, inappropriate, and not in the best interest of the children.

The evidence in the record indicates that Bowie was receiving means-tested public assistance, namely Ohio Works First.[8] The magistrate's decision acknowledged that Bowie received state assistance; however, the magistrate imputed income to Bowie after determining that Bowie was physically able to work and, thus, was intentionally underemployed. The trial court overruled Bowie's objections and adopted the magistrate's decision. Because R.C. 3119.05(I) provides that a court or agency "shall not" impute income to a parent receiving means-tested public assistance, unless failing to do so would be unjust, inappropriate, and not in the best interest of the child, we hold that the trial court abused its discretion in determining that Bowie was voluntarily underemployed and imputing income to him without making the required determination under R.C. 3119.05(I).

Lastly, we feel compelled to note that the transcript of the hearing indicates that Bowie repeatedly interrupted the magistrate, and in general, the record reflects Bowie's lack of respect toward the court. Such conduct is not acceptable. Nevertheless, we must sustain Bowie's assignment of error. The trial court's judgment is accordingly reversed, and we remand the cause for proceedings consistent with the law. The trial court upon remand, however, may properly impute income to Bowie, if the trial court, with an appropriate basis for doing so, makes the determination required under R.C. 3119.05(I).

[8] See R.C. 3119.01(C)(7)(a) (providing that "means-tested government administered programs" include Ohio Works First).

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and **FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the Court on June 8, 2011

per order of the Court _____.
Presiding Judge